

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Apr 27, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ABDIRAHMAN AHMED HASSAN,

Defendant.

No. 4-18-cr-06014-SMJ

**ORDER DISMISSING
DEFENDANT’S CONSTRUED
MOTION TO VACATE, SET
ASIDE, OR CORRECT
SENTENCE WITHOUT
PREJUDICE**

Before the Court is a seven-page document submitted by Defendant Abdirahman Ahmed Hassan, proceeding *pro se*, ECF No. 160. Defendant’s submission is captioned as an “Ex Parte Motion for (Expedited) Declaratory and Injunctive Relief,” as well as a “Motion for Subpoena (Duces Tecum); and Judicial Notice on Adjudicative Facts.” ECF No. 160 at 1. The submission seeks a range of relief including leave to proceed *in forma pauperis*, a writ of mandamus, injunctive relief prohibiting Defendant’s deportation, issuance of several subpoenas *duces tecum*, a declaratory judgment that Defendant is a U.S. resident alien, the re-opening of a prior civil lawsuit to which Defendant was a party, a new trial in the above-captioned matter, and an order vacating or correcting Defendant’s sentence. *See generally* ECF No. 160. Defendant also requests the Court take judicial notice of

ORDER DISMISSING DEFENDANT’S CONSTRUED MOTION TO VACATE,
SET ASIDE, OR CORRECT SENTENCE WITHOUT PREJUDICE – 1

1 facts concerning the manner in which he came to live in this country, as well as the
2 later criminal investigation and trial in this matter. *See id.* at 3–5.

3 The focus of Defendant’s filing appears to be that he was vindictively
4 prosecuted by the government after bringing at least one civil lawsuit against the
5 U.S. Bureau of Immigration and Customs Enforcement; that his constitutional
6 rights were violated in a number of ways during the investigation, prosecution, and
7 jury trial in this matter, and that the sentence the Court ultimately imposed was
8 unlawful. *See id.* As a result of these alleged infringements of his rights, Defendant
9 appears to seek relief from his sentence as well as injunctive relief against whatever
10 immigration consequences may flow from his conviction. *Id.* at 1–2, 6. Though
11 Defendant refers to the Administrative Procedures Act and Federal Rule of Civil
12 Procedure 65—legal provisions that are applicable to only civil litigation, and not
13 criminal cases—he specifically mentions his pending “criminal” proceeding
14 “within this Court” and, in his construed motion for entry of default judgment,
15 identifies this case number as one to which his filing relates.¹ *See* ECF No. 160 at 4–
16 5; ECF No. 164 at 1.

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18 ¹ Defendant also references his “appeal” and “civil actions.” ECF No. 160 at 1. If
19 Defendant intended for his filing to be submitted to the Ninth Circuit Court of
20 Appeals, he should refile it through the Ninth Circuit Clerk’s Office. It appears
Defendant was a party to two civil lawsuits in this District, though both appear to
have been dismissed. *See Hassan v. Lynch, et al.*, Case No. 4:16-cv-05113-EFS
(E.D. Wash. 2016); *Hassan v. Duke, et al.*, Case No. 4:17-cv-05196-EFS (E.D.
Wash. 2016). If Defendant intended for his filing to be submitted in either of those

Given that Defendant's filing appears to center around alleged violations of his rights in connection with the criminal proceedings in this matter, and because the relief he requests appears closely related to his conviction, sentence, and the immigration consequences which may result from them, the Court construes the filing as a motion under 28 U.S.C. § 2255. That provision allows a prisoner incarcerated pursuant to the judgment of a federal court to move the sentencing court to vacate, set aside, or correct the sentence on the grounds that it "was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack." 28 U.S.C. § 2255(a). **If Defendant meant his submission to serve a different purpose, he must file the appropriate legal pleadings clearly indicating his intention. For example, if Defendant intended to file a separate civil lawsuit, he must file a civil complaint, consistent with the requirements of the Federal Rules of Civil Procedure,² in the district court with jurisdiction over the claims for which he seeks redress.**

two civil actions, he must refile his motion clearly identifying the case in which he wishes for it to be filed.

² Namely, any complaint Defendant files should include **only** "(1) a short and plain statement of the grounds for the court's jurisdiction . . . ; (2) a short and plain statement of the claim showing that [he] is entitled to relief; and (3) a demand for

1 After he was sentenced in this case, Defendant filed an appeal, which remains
 2 pending, of his conviction and the sentence this Court imposed. *See* ECF No. 149;
 3 *see also United States v. Hassan*, Case No. 20-30013 (9th Cir. 2020). A district
 4 court is generally prohibited from considering a motion under § 2255 while an
 5 appeal of the judgment subject to collateral attack is pending. *Feldman v. Henman*,
 6 815 F.2d 1318, 1320 (9th Cir.1987) (citing *Black v. United States*, 269 F.2d 38, 41
 7 (9th Cir. 1959) (“A district court should not entertain a habeas corpus petition while
 8 there is an appeal pending in this court or in the Supreme Court.”); *see also* Rule 5,
 9 Rules Governing Section 2255 Proceedings, Advisory Committee Note (“[T]he
 10 courts have held that [a § 2255 motion] is inappropriate if the movant is
 11 simultaneously appealing the decision.”).³

12 As such, because Defendant’s appeal in this case has not yet been resolved
 13 by the Ninth Circuit, this Court is prohibited from considering the allegations in
 14 Defendant’s construed § 2255 motion, and from granting the relief he appears to
 15 seek. If his direct appeal is successful, the relief he seeks in his construed motion

16
 17 the relief sought, which may include relief in the alternative or different types of
 relief.” Fed. R. Civ. P. 8(a)(1)–(3).

18 ³ Some district courts have held it may be appropriate to consider a § 2255 motion
 19 while an appeal is pending where “extraordinary circumstances” warrant. *See, e.g.,*
 20 *Thorson v. United States*, No. C18-136 RSM, 2018 WL 1737964, at *2 (W.D. Wash.
 Apr. 11, 2018). However, even if the Court adopted this approach, it finds nothing
 in Defendant’s filing establishing “extraordinary circumstances” that would justify
 immediate consideration of Defendant’s motion.

ORDER DISMISSING DEFENDANT’S CONSTRUED MOTION TO VACATE,
 SET ASIDE, OR CORRECT SENTENCE WITHOUT PREJUDICE – 4

1 will likely be rendered moot; if it is not Defendant may, if otherwise appropriate
2 under the legal standards governing § 2255 motions, renew his arguments before
3 this Court.⁴ Furthermore, to the extent Defendant seeks relief in this matter other
4 than that to which he may be entitled under § 2255, the Court likewise lacks
5 jurisdiction over his request due to the pending appeal. *Griggs v. Provident*
6 *Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (“The filing of a notice of appeal is an
7 event of jurisdictional significance—it confers jurisdiction on the court of appeals
8 and divests the district court of its control over those aspects of the case involved in
9 the appeal.”).

10 Lastly, insofar as the Court has jurisdiction to consider Defendant’s request
11 for a writ of mandamus, he has not demonstrated such extraordinary relief is
12 appropriate. *See Will v. United States*, 389 U.S. 90, 107 (1967) (describing writ of
13 mandamus as “among the most potent weapons in the judicial arsenal”). Three
14 conditions must be satisfied before a writ of mandamus will issue: (1) the petitioner
15 must have no other adequate means to attain the relief desired; (2) the petitioner
16

17 ⁴ Defendant filed a document the Court construes as a motion for entry of default
18 judgment on his construed § 2255 motion, ECF No. 164. On receipt of a motion
19 under § 2255, the Court must perform a preliminary review of the bases it sets forth
20 and the relief it requests prior to ordering a response from the Government, where
necessary. See 28 U.S.C. § 2255(b). The Court has not done so here, nor will it do
so until Defendant’s appeal is resolved. As such, the fact that the Government has
not responded to Defendant’s motion does not entitle him to any relief at this time,
and the construed motion for entry of default judgment is **DENIED**.

1 must show that the right to the writ is clear and indisputable; and (3) “even if the
2 first two prerequisites have been met, the issuing court, in the exercise of its
3 discretion, must be satisfied that the writ is appropriate under the circumstances.”
4 *Karnoski v. Trump*, 926 F.3d 1180, 1203 (9th Cir. 2019) (citing *Cheney v. U.S.*
5 *District Court*, 542 U.S. 367, 380–81 (2004)).

6 Defendant has failed to show that he lacks alternative legal mechanisms to
7 obtain the relief he requests. To the extent Defendant seeks redress for violations of
8 his rights during his prosecution or at trial, Defendant may obtain relief through his
9 pending appeal before the Ninth Circuit and if necessary may, after that time, pursue
10 a § 2255 motion in this Court. And to the extent Defendant seeks injunctive or
11 declaratory relief under the Administrative Procedures Act, he may bring an
12 independent civil action by filing the appropriate legal pleadings, as described
13 above. As such, Defendant has not identified relief to which he is clearly entitled
14 that is inaccessible to him through alternative legal avenues, and a writ of
15 mandamus is unwarranted.

16 Accordingly, **IT IS HEREBY ORDERED:**


- 17 **1.** Defendant’s construed motion under 28 U.S.C. § 2255 to vacate, set
18 aside, or correct his sentence, **ECF No. 160**, is **DISMISSED**
19 **WITHOUT PREJUDICE** to Defendant’s refile the motion after
20

1 conclusion of his appeal before the United States Court of Appeals for
2 the Ninth Circuit, Case No. 20-30013.

3 **2.** Defendant's construed motion for entry of default judgment, **ECF**
4 **No. 164**, is **DENIED**.

5 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
6 provide copies to *pro se* Defendant.

7 **DATED** this 27th day of April 2020.

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9 SALVADOR MENDOZA, JR.
United States District Judge

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